OPINION OF MR ADVOCATE GENERAL VAN GERVEN
delivered on 11 July 1991 *

Mr President,
Members of the Court,

1. The present case concerns a reference by the Netherlands College van Beroep Studiefinancering (Study Finance Tribunal) under Article 177 of the EEC Treaty for a preliminary ruling on the interpretation of Article 48 of the EEC Treaty and on Article 7(2) and Article 12 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community.[1] The questions submitted to the Court arose in the course of proceedings between M. J. E. Bernini, the applicant, and the Netherlands Minister van Onderwijs en Wetenschappen (Minister for Education and Science), the defendant, (hereinafter referred to as the 'Minister') concerning the entitlement of students from other Member States to Netherlands grants for studies abroad.

Facts and procedure

2. In 1964 when she was two years of age, Mrs Bernini, an Italian national, came with her parents to live in the Netherlands. Her father then took up a post at the University of Leiden where he continues to be employed. Mrs Bernini completed her primary and secondary schooling and then pursued occupational training at a Middelbare Technische School (Secondary technical college). In the context of that occupational training she worked for ten weeks (from 21 March 1985 to 31 May 1985) as a paid trainee in the design and planning department of a furniture factory in Haarlem, in the Netherlands. In November 1985 she went to study architecture at the University of Naples and in July 1986 she applied for study finance under the Netherlands Wet op de Studiefinanciering (Law on Study Finance) of 24 April 1986.[2]

In May 1987 her application was rejected on the ground that, in the view of the competent authority, she did not belong to the category of non-Netherlanders assimilated to Netherlanders under Article 7 of the Law on Study Finance for the award of study finance and because the study of architecture at the University of Naples did not satisfy the requirements contained in Articles 9 and 11 of the Law on Study Finance. In June 1987 Mrs Bernini lodged a complaint with the same Minister against the rejection; that complaint was, however, rejected in August 1987 on the ground that Mrs Bernini, as the Minister again stated, could not for grant purposes, be assimilated to a national under Article 7 of the Law.[3] It was made clear that in order to claim study

* Original language: Dutch.

1 — OJ, English Special Edition 1968 (II), p. 475.

2 — *Netherlands Staatsblad* 1986, p. 252. The Law entered into force on 1 October 1986.

3 — Architecture at the University of Naples does now fall within the terms of the Law on Study Finance.

finance as a non-national, Mrs Bernini ought to have resided in the Netherlands whilst according to the Minister she was resident in Naples.

3. Mrs Bernini appealed against that ministerial decision to the College van Beroep Studiefinanciering, that is to say the court making the reference. In her appeal she puts forward the argument that, as a result of her training period from 21 March to 31 May 1985, she became a migrant worker and is therefore entitled to study finance under Article 7 of Regulation (EEC) No 1612/68. In the alternative she submits that the award to her of study finance for the studies commenced by her constitute a social advantage in favour of her father within the meaning of Articles 7 and Articles 10 to 12 of Regulation (EEC) No 1612/68. Finally, she relies on Article 12 of that regulation which, she says, gives her direct entitlement to study finance as the child of a migrant worker.

For his part the Minister stated before the national court that, by working in 1985 'for some days during a vacation' Mrs Bernini did not acquire the status of migrant worker and therefore could not invoke Article 7 of Regulation (EEC) No 1612/68. The father of Mrs Bernini, whose status as a migrant worker is uncontested, is indeed entitled under Article 7 to the same social advantages as Netherlands workers, but as the Minister argued, the study finance in question does not represent for the father of Mrs Bernini a social advantage within the meaning of the abovementioned Article 7 since it is expressly granted to the student and not to his/her parents. Finally, the Minister also rejected the possibility of reliance being placed on Article 12 of Regulation (EEC) No 1612/68 on the ground that Mrs Bernini is no longer a member of the family of a migrant worker within the meaning of Article 10(1) of that regulation nor complies with the residence requirement laid down in Article 12.

4. The national tribunal has referred the following five questions to the Court for a preliminary ruling:

'1. Must a person such as Mrs Bernini, where that person has been employed in one Member State (in this case, the Netherlands) as a trainee in the framework of training be regarded, on subsequently going to study in the Member State of which he or she is a national, as a migrant worker falling within the scope of Articles 48 and 49 of the EEC Treaty and of Regulation (EEC) No 1612/68?

2. Should the case-law of the Court, as laid down in its judgments in Case 39/86 (*Lair*) and in Case 197/86 (*Brown*) be understood as meaning that a migrant worker, in a case such as the present one, in which there must be considered to be (some) demonstrable link as regards content between the nature of the (genuine and effective) work previously undertaken and the studies subsequently undertaken by the worker, retains the status of migrant worker within the meaning of Article 48 of the EEC Treaty and Article 7 of Regulation (EEC) No 1612/68 even if he did not become unemployed involuntarily (for example where the worker gave up his previous activities wholly of his own volition in order to study) and if he goes on to study, not immediately after

completing the work previously undertaken, but some considerable time later?

3. What criteria should be applied in order to determine whether a child of a national of a Member State who is or has been employed in the territory of another Member State is "residing" within that other Member State within the meaning of Article 12 of Regulation (EEC) No 1612/68? In that connection, is it possible that a child who has remained outside that other Member State for some years in order to pursue his studies may none the less be regarded as residing there?

4. Does Community law require a Member State (such as the Netherlands) which, subject to specified conditions, offers the children of its national workers an opportunity in financial terms of following specified training in another Member State without imposing a requirement of residence in the Member State of origin (the Netherlands) to offer this opportunity under the same conditions to children of Community workers employed in that Member State even if, at least after the commencement of the studies, those children could no longer be said to be "residing" in that Member State within the meaning of Article 12 of Regulation (EEC) No 1612/68? Should the requirement of residence in the host Member State imposed on the child of a Community worker in this regard then no longer be imposed for the purpose of the application of Article 12, because otherwise such application is contrary to Article 48 of the EEC Treaty?

5. May the grant of study finance (such as that established by the Netherlands Wet op de Studiefinanciering) to a child of a worker within the meaning of Article 7 of Regulation (EEC) No 1612/68 be considered a social advantage within the meaning of Article 7(2) of that regulation where the worker in question would otherwise himself have to bear wholly or in part the maintenance and tuition costs of that child and where such a grant therefore demonstrably entails a financial saving for the worker in question?

If so, does this mean that the child of the worker may claim an independent right to study finance in the case in which the national rules of the Member State (such as the Netherlands legislation) confer such a right solely upon the child who is studying and not upon the working parent? Is there, a *full* right to study finance or, for example, only a right corresponding to the extent to which the grant of study finance to the child entails a demonstrable financial saving for the worker concerned? Does it make any difference whether or not the said child resides in the Member State in which the working parent in question is employed, in a situation in which the national legislation of the Member State (such as the Netherlands legislation) does not impose the

requirement of residence in the Member State on children of its own national workers?'

5. In a letter dated 1 March 1991 the acting president of the College van Beroep Studiefinanciering informed the Court that, following the judgment of 13 November 1990 in the case of *Carmina Di Leo* v *Land Berlin*,[4] the Minister had altered his position and was now of the view that Mrs Bernini was entitled as the child of a migrant worker to study finance for her studies. It is apparent from that letter that the national court no longer regards as essential questions 3 and 4 concerning Mrs Bernini's entitlement in that capacity to study finance. With regard to the other questions submitted for a preliminary ruling concerning Mrs Bernini's entitlement to study finance as a migrant worker (questions 1 and 2) or on the basis of a social advantage in favour of her father in his capacity as a migrant worker (question 5), the national court states that the abovementioned judgment gives no reply to those questions and that a reply to those questions is highly desirable, in particular because such reply is *also* of great importance in determining similar applications for study finance in other cases pending before it.

6. At the hearing the Netherlands Government confirmed that it had in fact altered its position as described above and that the study finance applied for by Mrs Bernini in her capacity as the child of a worker had in the meantime been granted.

4 — Case C-308/89 *Di Leo* [1990] ECR I-4185.

In those circumstances I must first examine whether the Court is competent under Article 177 of the EEC Treaty to rule on the questions referred to it.

The competence of the Court

7. The Court is not competent to rule on questions of interpretation which do not correspond to an objective requirement inherent in the resolution of a dispute.[5] Within the framework of the reciprocal assignment of functions between the national courts and the Court of Justice it is for the national court to assess the relevance of the questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment.[6] The Court may not pronounce on the considerations prompting the reference for a preliminary ruling.[7] None the less, the national court's power of referral is conferred on it solely in order to enable it to resolve disputes actually before it.[8]

Accordingly, the Court must of its own motion declare itself not to have jurisdiction where no underlying dispute subsists or the questions submitted have no connection with the facts or the subject-matter of the main proceedings.[9] To the Court's knowledge Mrs Bernini has not withdrawn

5 — Judgment in Case 244/80 *Foglia* v *Novello* [1981] ECR 3045, paragraph 18.

6 — Judgment in Case 338/85 *Pardini* v *Ministero del Commercio con l'Estero* [1988] ECR 2041, paragraph 8; see also the decision of the Court in Case C-286/88 *Falciola* [1990] ECR I-191, paragraph 7, and also the judgment in *Foglia* v *Novello* cited above in footnote 5, paragraphs 14 to 15.

7 — Judgment in Case 126/80 *Salonia* v *Poidomani and Giglio* [1981] ECR 1563, paragraph 6; see also the judgment of 19 December 1968 in Case 13/68 *Salgoil* [1968] ECR 453.

8 — Cf. paragraph 9 of the judgment in *Pardini* v *Ministero del Commercio con l'Estero*, cited above in footnote 6.

9 — See paragraph 6 of the judgment in *Salonia* v *Poidomani and Giglio*, cited above in footnote 7, and paragraph 8 of the *Falciola* decision cited above in footnote 6.

her appeal; there is no information to that effect from the national court, nor at the hearing was any such statement made. It may not be excluded that Mrs Bernini, although she has obtained the study finance applied for, may have an interest in a declaration that she is entitled on one of the two other grounds submitted by her. I am thus proceeding on the assumption that the questions raised in connection with those other grounds are, or may be, connected with the facts or with the subject-matter of the main proceedings (still pending before the national court) and I shall therefore answer them below. As regards questions 3 and 4, which the national court no longer considers essential for the dispute pending before it, there is no longer any connection so that those questions do not call for a reply. Nevertheless, in order to facilitate the correct understanding of the 'residence' requirement raised in these questions I shall briefly refer to the relevant case-law of the Court because that may be of interest to the national tribunal in framing its reasons when it gives a decision in the main action.

Entitlement to study finance in the capacity of a migrant worker

8. Article 7(2) of Regulation (EEC) No 1612/68 provides that a national of a Member State who works in another Member State is to enjoy in that State the same social and tax advantages as national workers. In accordance with the settled case-law of the Court study finance must be regarded as a social advantage within the meaning of that article.[10] In the first and second questions submitted the national tribunal raises the point whether a student such as Mrs Bernini ever had the status of migrant worker within the meaning of Article 48 of the EEC Treaty and Regulation (EEC) No 1612/68 and, if so, whether she retained that status at the time of her studies.

9. It is has already been stated that in the context of the technical training which preceded her university studies, Mrs Bernini worked for a period of ten weeks from 21 March to 31 May 1985 as a paid trainee with a furniture manufacturer in the Netherlands and that she consequently considers herself to have acquired the status of a migrant worker.

In accordance with the case-law of the Court a migrant worker must be deemed to be any person actually engaged in effective and genuine salaried employment to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary.[11] In accordance with these judgments, the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.[12]

In the *Lawrie-Blum* and *Brown* v *Secretary of State for Scotland* judgments the Court

10 — See e. g. the judgment in Case 39/86 *Lair* v *Universität von Hannover* [1988] ECR 3161, paragraphs 19 to 24 and, specifically in regard to study finance for studies pursued abroad, the judgment of 27 September 1988 in Case 235/87 *Matteucci* v *Communauté Française of Belgium* [1988] ECR 5589, paragraph 11.

11 — Judgments in Case 53/81 *Levin* v *Staatssecretaris van Justitie* [1982] ECR 1053, paragraphs 16, 17 and 21; in Case 139/85 *Kempf* v *Staatssecretaris van Justitie* [1986] ECR 1741, paragraph 14; Case 197/86 *Brown* v *Secretary of State for Scotland* [1988] ECR 3205, paragraph 21; Case 344/87 *Bettray* v *Staatssecretaris van Justitie* [1989] ECR 1621, paragraph 13 and Case 196/87 *Steymann* v *Staatssecretaris van Justitie* [1988] ECR 6159, paragraph 13; see also my Opinion delivered in Case C-357/89 *Raulin* [1992] ECR I-1027, at p. I-1040, at paragraph 7.

12 — See the judgment in Case 66/85 *Lawrie-Blum* v *Land Baden Württemberg* [1986] ECR 2121, paragraph 17, and the *Bettray and Brown* v *Secretary of State* judgments cited above in footnote 11, at paragraphs 12 and 21 respectively.

recognized that 'trainees' who for remuneration perform genuine and real services for and under the direction of another person either as practical preparation for the exercise of a profession [13] or as part of 'pre-university industrial training' [14] may be regarded as migrant workers. However, as the Netherlands Government observed, those cases involved training periods of much longer duration (upwards of 8 months).

In the *first question* submitted the national tribunal wishes to know whether a period of ten weeks' salaried employment completed by a trainee in the context of occupational training is sufficient to confer on that person the status of migrant worker.

10. It is for the national tribunal, having regard to the actual circumstances, to assess whether the work performed during a certain period is genuine and effective and not on such a small scale as to be purely marginal and ancillary. As I have stated in my opinion of today's date in the *Raulin* case (C-357/89), it must examine whether the employment relationship was not of such short duration that the person concerned was unable to become acquainted with the actual work and whether the work had any economic value for the employer.

At the hearing the representative of the Netherlands Government referred in that connection to the judgment of the Court of 31 May 1989 in the *Bettray* v *Staatssecretaris van Justitie* case. [15] In that judgment the Court held that, notwithstanding the fact that employment is performed for and under the direction of another person and that remuneration is received therefor, such work 'cannot be regarded as an effective and genuine economic activity if it constitutes merely a means of rehabilitation or reintegration for the persons concerned and the purpose of the paid employment ... is to enable those persons sooner or later to recover their capacity to take up ordinary employment or to lead as normal as possible a life' (paragraph 17). That case involved work performed in the context of 'social employment' by persons who as a result of factors inherent in them are not in a position to perform work over a long period under normal conditions and who, it should be understood, are not available on the labour market. [16] In its judgment the Court paid much heed to the fact that Mr Bettray was not selected on the basis of his capacity to perform a certain activity but that, on the contrary, it is the activities which are chosen in the light of the capabilities of the persons who are going to perform them in order to maintain, re-establish or develop their capacity for work (paragraph 19).

13 — The *Lawrie-Blum* judgment (cited in footnote 12) involved a preparatory period which formed part of teacher training and consisted in the giving of 11 hours lessons per week. At paragraph 19 of that judgment the Court stated that: the fact that teachers' preparatory service, like apprenticeships in other occupations, may be regarded as practical preparation directly related to the actual pursuit of the occupation in point is not a bar to the application of Article 48(1) if the service is performed under the conditions of an activity as an employed person.

14 — The *Brown* judgment (cited in footnote 11) concerned activity as an employed person described in the order for reference as pre-university industrial training (paragraph 3). Nevertheless, the Court decided that, by virtue of this activity which constituted genuine and effective salaried employment, Brown had acquired the status of migrant worker (paragraphs 20 to 23).

15 — Cited above in footnote 11.

16 — See also the Opinion of Mr Advocate General Jacobs of 8 March 1989, at p. 1637.

11. Similarly in relation to a person who, as part of pre-university industrial training, completes a remunerated period of ten weeks with an undertaking, it may be said that he was not selected for that employment on the basis of his skills but, on the contrary, in order to develop his capacity for work.

Yet I can scarcely imagine that in *Bettray* the Court wished to go back on its decision in *Lawrie-Blum* (to which it moreover expressly refers) and in *Brown*. In *Bettray* the Court begins its reasoning with a reference to its settled case-law according to which the scope of Article 48 and thus the concept of worker must be interpreted broadly (paragraph 11) and reiterates that regard may not thereby be had to the level of productivity of the worker concerned (paragraph 15) or the *sui generis* nature of the employment relationship (paragraph 16). The scope of the *Bettray* judgment must therefore be limited to the specific situation of social employment and in that case, the re-habilitation of drug addicts.

12. However, that does not mean that, in assessing whether a person has acquired the status of worker, account may not be taken of work performed in connection with a training period. In the first place the national court must investigate whether the work performed in the training period reveals the essential characteristics of an employment relationship. For that requirement to be satisfied, as *Lawrie-Blum* shows (which concerned a preparatory period forming part of teacher training), the trainee must perform services during the working period determined by an employer for and under the direction of that person and, in consideration thereof, must receive payments which may be regarded as remuneration for the services performed (and for the duties involved in the period of preparatory service) (paragraphs 17 and 18). If the services performed have no or only a slight economic value for the employer (e. g. if the trainee is placed with the employer only at the request of the educational establishment and in accepting the trainee is in fact only acting out of benevolence or for reasons of public relations) and/or should the remuneration, if any, paid by him be merely nominal, then there cannot in my view be said to be an employment relationship such as to confer the status of worker. [17]

Secondly, when the essential characteristics of an employment relationship are in fact found to exist, the national court, in examining the question whether the employment relationship has been of sufficiently long duration in order not to be regarded as purely marginal and ancillary in the terms of the Court's case-law, may also take account of the actual nature of the training period, perhaps requiring a longer period in the case of work carried out as a trainee which by definition is intended to develop skills in the workplace, than in the case of normal work. In the case of work carried out as a trainee, a period of ten weeks seems to me therefore to be (too) short. [18]

17 — In such a case, where the training period forms part of a course of studies, the trainee should be regarded as a migrant student (with the rights attached to that status) rather than as a migrant worker.

18 — In the *Brown* case (cited above in footnote 11) a period of 8 months was considered sufficiently long.

13. Should the national tribunal come to the conclusion that Mrs Bernini did acquire the status of migrant worker as a result of her period of training, the *second question* seeks to ascertain whether she has retained the status of worker and still possesses it, now that she is engaged in full-time studies at the University of Naples.

In *Lair*, the Court held that in the field of study finance the student retains the previously acquired status of worker if there is continuity between the previous occupational activity and the studies embarked on, that is to say there must be a link between 'the purpose of studies and the previous occupational activity'. The Court added that such continuity may not, however, be required 'where a migrant worker has involuntarily become unemployed and is obliged by conditions on the job market to undertake occupational retraining in another field of activity' (paragraph 37).

It appears from the terms of the question submitted that the national tribunal regards the requisite continuity between the purpose of the studies and the previous occupational activity as subsisting in the case pending before it. However, it wishes to know whether a student also retains the capacity of migrant worker when he has become voluntarily unemployed, for example by ceasing employment wholly of his own volition in order to study (first part of the question) and, if so, whether that is still the case if he commences studies only some considerable time after cessation of employment (second part of the question).

14. As to the first part of the question I do not think that *Lair* and *Brown* can afford support for the proposition that, in a situation in which the requisite link is present between the previous occupational activity and the studies embarked on, the status of migrant worker is retained only if the worker is 'involuntarily unemployed' at the time when he takes up his studies. Indeed, in *Lair* the Court did not once find it necessary to mention that Sylvie Lair was (probably) involuntarily unemployed at the time when she took up her studies[19] and *Brown* involved a worker who was to become unemployed of his own volition, since it was clear from the beginning that Steven Brown would cease employment after eight months in order to take up his studies.

However that may be, even if the entitlement of the student/former worker were to be made conditional on his becoming unemployed 'involuntarily', I am of the view that the notion of involuntary unemployment must be given a broad interpretation for the reasons stated in my Opinion of today's date in the *Raulin* case (paragraph 14).

15. As to the second part of the question (concerning the period which may elapse between the previous occupational activity and the commencement of studies) I consider that the 'continuity' requirement under the Court's case-law is satisfied only if the worker has given up his occupational activity (or, if he is unemployed, has given up his search for a job) with the actual

19 — I infer that from Advocate General Slynn's Opinion in which he noted that Sylvie Lair was in receipt of unemployment benefit (at p. 3179 of the Opinion).

purpose of taking up studies and thus improving his career and employment prospects. If the studies are taken up only some considerable time [20] after cessation of employment (or the search for employment), that may be a significant indication of the fact that employment (or the search for a job) was not given up for the purpose of taking up studies. It is of course for the national tribunal to assess the duration of the interruption in that light.

16. According to the Danish Government, a worker who leaves the host Member State with a view to studying for a considerable period in the Member State of which he is a national cannot claim study finance in the former Member State because the assistance would then no longer contribute to the integration of the migrant student in the financing Member State.

In my view the *Di Leo* judgment of 13 November 1990, cited above, has invalidated that defence.

In that case the Netherlands and German Governments used the same argument in order to show that the financing of (medical) studies abroad and in particular in the Member State of origin could not come under Article 12 of Regulation (EEC) No 1612/68. The Court rejected that argument in clear terms and it may be deduced from its reasoning that the same argument put forward in connection with Article 7(2) of the same regulation must also be rejected. [21]

20 — In its observations to the Court the Commission, rightly, in my view, pointed out that in the present case only a short period of time expired between employment and the commencement of the relevant studies, namely five months, which then in part coincided with the university vacation.

21 — In paragraphs 14 and 15 of that judgment (see footnote 4 above) the Court borrowed arguments from its *Matteuci* judgment (see footnote 10) given on Article 7(2) in coming in paragraph 16 to its conclusion in connection with Article 12.

Entitlement to study finance on the basis of status as a child of a migrant worker

17. As already mentioned, the national tribunal informed the Court that following the abovementioned *Di Leo* judgment, the Minister was no longer contesting Mrs Bernini's right to study finance in her capacity as a child of a migrant worker. [22] The Minister initially took a different view, considering that as Mrs Bernini was now studying in Naples, she could no longer be regarded as resident in the Netherlands within the meaning of Article 12 of Regulation (EEC) No 1612/68. Although the national tribunal no longer considers the *third and fourth* questions submitted concerning this dispute to be relevant and I also give no proposed reply to those questions, I nevertheless, wish as already stated (paragraph 7), to make one observation in connection with the Court's case-law on the residence requirement contained in the abovementioned Article 12.

18. In *Di Leo* the Court held, in connection with an Italian student residing in Germany (the daughter of an Italian worker also resident in Germany) who wished to receive her medical training at the University of Sienna, that under Article 12 she had a right to financial assistance for training on the same footing as nationals of the Member State of residence even if the training was undertaken in the Member State of which she was a national. The Court thereby implicitly acknowledged that the residence requirement (the validity of which was not

22 — See paragraphs 5 and 6 above.

doubted) may be satisfied in the Member State granting financial assistance even if for the purposes of her studies, the student goes to reside in another Member State. [23]

That interpretation of the expression 'residing' seems to be me to be in line with the Court's case-law in other fields of Community law, in which the term 'residence' is interpreted as the place where a person's permanent centre of interests is located. [24] Evidently not every temporary residence in another place can cause the permanent centre of interests to be transferred there. Whether that occurs is dependent, *inter alia*, upon the motives for the transfer and the nature of the activities carried on there, as well as the family situation of the person concerned. [25] In relation to students the fact that the change of residence is occasioned by, and limited to the duration of, the studies is thus a material factor.

19. Consequently, the decision by the Minister to go back on his earlier view and to grant Mrs Bernini financial assistance after all, indicates that the Minister, in my view rightly, came to the conclusion that a student retains her residence in the host Member State in a case such as this, where it is in particular clear that the student's close family on which she is dependent continues to reside in that Member State and she herself has resided and attended school there since the age of two years, and that she left the Member State for the purpose and duration of her studies and regularly returns to her family, and that she has so far not given any indication of settling elsewhere after her studies. [26]

Entitlement to study finance on the basis of the parent's status as a migrant worker

20. In the *fifth question* the national tribunal seeks to ascertain whether the award of study finance to the child of a migrant worker may be regarded as constituting a social advantage within the meaning of Article 7(2) of Regulation (EEC) No 1612/68 in favour of the parent/migrant worker, if the parent would otherwise be obliged to bear, wholly or in part, the costs of maintenance and education of the child and, if so, whether the child can, in that case, claim itself study finance where national legislation confers that right only on the child itself, and whether in that connection it is material that the child is resident in the host Member State, since the national legislation imposes no residence

23 — The *Di Leo* judgment (see footnote 4) would otherwise only be relevant to the children of migrant workers residing in a border area who during their studies abroad reside in the host Member State. That was not the case of Carmina di Leo herself.

24 — See the judgment in Case 13/73 *Angenieux* v *Hakenberg* [1973] ECR 935, paragraphs 28 to 32 and paragraph 3 of the operative provision; see for example also the recent judgment in Case C-216/89 *Reibold* v *Bundesanstalt* für Arbeit [1990] ECR I-4613.

25 — See the *Reibold* judgment already mentioned above.

26 — In the judgment in Joined Cases 389 and 390/87 *Echternach and Moritz* v *Minister for Education and Science* [1989] ECR 723 it was, however, accepted that a student is resident in the Member State in which he is pursuing his studies, although the members of his family had returned to live in their Member State of origin. However, in that case it was a decisive factor that the student had always resided with the members of his family in the host country (before their return to their country of origin) and studied there and, after accompanying his family, had come back in order to continue his studies, which was not possible in his country of origin (paragraph 23).

requirement on the children of national workers.

21. Social advantages within the meaning of Article 7(2), mentioned above, comprise all advantages 'which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and whose extension to workers who are nationals of other Member States therefore seems likely to facilitate the mobility of such workers within the Community'.[27] On the basis of that consideration it was held in that judgment (paragraph 24) that a Member State whose legislation provides benefits for young persons seeking work on the grounds of their personal situation,[28] cannot refuse them to the dependent children of a worker who is a national of another Member State on the basis that the children are nationals of a non-Member State. In the *Lebon* judgment the Court stated that a social advantage provided for by the legislation of the host Member State which guarantees in general terms the minimum means of subsistence can be refused to a child (in that case of more than 21 years of age) since 'that benefit does not constitute for the worker a social advantage within the meaning of Article 7(2) of Regulation No 1612/68, inasmuch as he is no longer supporting his descendant'.[29]

That seems to me to provide a reply to the first part of the question. Contrary to the submissions made in this case by the Belgian and Danish Governments it is clear from the *Deak* judgment that social advantages conferred by the relevant national legislation on the child itself are to be regarded as a social advantage for the parent/migrant worker within the meaning of Article 7(2) on the ground that they are intended to facilitate the freedom of movement for workers within the Community. However, that is only true, as is stated in *Lebon*, where the worker is still supporting the child. If that is in fact the case — and that is for the national court to assess — then it seems to me that the total amount of the study finance must be regarded as a social advantage within the meaning of Article 7(2).

22. The national tribunal also wishes to know whether the child of a migrant worker, in the event that the award of study finance is a social advantage in favour of the parent within the meaning of Article 7(2), can claim a grant in its own right, and, in the affirmative, whether entitlement may subsist irrespective of any residence requirement in the case of the child.

In accordance with the judgment of the Court in *Lebon*, the members of the family of a migrant worker within the meaning of Article 10 of Regulation (EEC) No 1612/68 can only indirectly claim the right to equal treatment which the worker himself is entitled to under Article 7 of the regulation.

27 — See for example the judgment in Case 94/84 *ONEM* v *Deak* [1985] ECR 1873, paragraph 21.

28 — In paragraph 15 of that judgment it was pointed out that the special unemployment benefits are made available to young persons seeking work on the basis of their own situation and not by reason of the fact that they are members of a worker's family pursuant to Regulation (EEC) No 1408/71.

29 — Judgment in Case 316/85 *Centre public d'aide social de Courcelles* v *Lebon* [1987] ECR 2811, paragraph 13.

In other words, only if the study finance in question is to be regarded as a social advantage in relation to the parent/migrant worker himself within the meaning of Article 7(2) of that regulation, which is here the case, may his children claim the same entitlement as the children of national workers.

As an indirect entitlement on the part of the child to equal treatment, that is a consequence of the right of the parent/migrant worker to study finance regarded as a social advantage in his favour, the child's entitlement is not in my view subject to a requirement on the part of the child to reside in the Member State awarding the study finance in question (in the same way as, following the *Deak* judgment, it is not subject to possession by the child of the nationality of one of the Member States: see paragraph 21 above). The fact that Article 12 of Regulation No 1612/68 confers certain advantages on children of migrant workers in connection with admission to general educational, apprenticeship and vocational training courses but on condition that the child is resident in the Member State in question cannot in my view restrict the particular and wider scope of Article 7(2), where study finance granted pursuant to national legislation may under that provision be regarded as a social advantage in favour of the parent/migrant worker.

Conclusion

23. In the light of the foregoing, I propose that the Court should reply to the first, second and fifth questions submitted as follows:

1. A national of a Member State who works in another Member State as a trainee as part of his training must be regarded as a migrant worker within the meaning of Article 7 of Regulation (EEC) No 1612/68, if his employment under the direction of the employer has a certain economic value for which he receives remuneration from the employer which is not merely nominal *and* the duration of the training period, having regard to the nature thereof and the possibilities for the trainee to familiarize himself with the work carried out, is sufficiently long in order not to be regarded as purely marginal and ancillary.

2. In a case where there is required to be and is in fact a link between the nature of the previous occupational activity and subsequent studies, a person who has acquired the status of worker retains that status, where he or she ceased

employment for the purpose of taking up the studies in question and the period of time which has elapsed between the previous occupation and the subsequent studies is not so long that it may be inferred therefrom that the worker did not cease employment in order to pursue studies.

3. Study finance granted in a Member State to the children of national workers constitutes for a migrant worker a social advantage within the meaning of Article 7(2) of Regulation (EEC) No 1612/68, where the worker continues to support the child, in which case the child derives therefrom an indirect claim to full equality of treatment with the children of national workers, irrespective of his place of residence in a case such as the present one in which the national legislation in question imposes no residence requirement on the children of national workers.